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The Cornelison Doctrine: A New Jurisdictional Approach

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INTRODUCTION

A state's exercise of in personam jurisdiction over a nonresident defendant falls into one of two categories. If the nonresident defendant's forum-state activities[1] are wide-ranging, continuous, and systematic, the state may assume general jurisdiction over the defendant for all causes of action brought against him.[2] This is true even if an asserted cause of action has little or no connection with the defendant's forum-state activities.[3] If, however, the nonresident defendant's contacts with the forum state are not extensive enough to warrant general jurisdiction, jurisdiction may be exer-

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1. As a prerequisite to the exercise of in personam jurisdiction, a nonresident defendant must have had certain activities or contacts within the forum state. The United States Supreme Court, in International Shoe Co. v. Washington, 326 U.S. 310 (1945), discussed the defendant's forum-state activities and concluded that

> due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain *minimum contacts* with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Id. at 316 (emphasis added).

2. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952). In *Perkins*, the nonresident defendant mining company conducted continuous and systematic corporate activities in Ohio "consisting of directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc." *Id.* at 445. The cause of action, however, was not related to any of these forum-state contacts. The Supreme Court nevertheless held that Ohio was not prohibited by the due process clause of the fourteenth amendment from exercising jurisdiction over the defendant. The defendant had, for all practical purposes, moved its operational headquarters to Ohio. Therefore, its forum-state activities had become so substantial that it could be made amenable to "a proceeding *in personam* to enforce a cause of action not arising out of the corporation's activities in the state of the forum." *Id.* at 446.

Additionally, *Perkins* does not compel a state to expand its long-arm reach to such perimeters. The Court held merely that if a state desires to so extend its jurisdictional arm, it would not be prohibited by federal due process from doing so.

3. *Id.*

cised only if the cause of action arises out of or is substantially connected[4] with the defendant's forum-state contacts.[5] This concept is known as specific jurisdiction.

Until 1976, the exercise of in personam jurisdiction demanded strict adherence to the rigorous requirements of these two categories. However, in *Cornelison v. Chaney*,[6] the California Supreme Court rejected this rigid mold, expanded the concept of specific jurisdiction to its broadest constitutional reach, and thereby established an important precedent in jurisdictional law.

The *Cornelison* case involved an automobile accident in Nevada. The plaintiff was a California resident whose husband had been killed when their automobile collided with the defendant's truck. Shortly thereafter, the plaintiff brought suit in California[7] alleging that the defendant's negligent driving caused her husband's death.

The defendant, a Nebraska resident, was a truck driver who conducted his interstate trucking business by hauling goods through several states. For seven years preceding the accident, the defendant had delivered cargo into California. He made these deliveries approximately twenty times a year, with each haul having an average value of $20,000. The defendant held a license from the Public Utilities Commission of California to haul freight in the state and, in the past, had also been employed as an independent contractor by a California shipping brokerage firm.[8] The accident occurred near the California border when the defendant was hauling dry

4. The terms *arising out of* and *substantial connection* are synonymous terms of art. They are often used interchangeably to describe the same proposition—namely, that the cause of action came into existence as a result of, and is closely related to, the defendant's activities within the forum state. For an illustration, *see* note 13 *infra*.

5. Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

6. 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).

7. The plaintiff alleged that California had jurisdiction over the defendant under CAL. CIV. PROC. CODE § 410.10 (West 1973): "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." The plaintiff could also have instituted the suit either in Nebraska, the defendant's residence (subject only to a possible *forum non conveniens* dismissal because none of the relevant events occurred in Nebraska. *See generally* Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)) or in Nevada, the site of the accident (NEV. REV. STAT. § 14070 (1969) permits service of process on an operator of a motor vehicle who had been involved in a collision in Nevada.).

8. At the time of the accident, however, the defendant was not under contract with this or any other trucking brokerage firm.

milk destined for Long Beach, California. On the return trip, he had planned to obtain cargo in California to be delivered elsewhere.

In considering these California contacts, the *Cornelison* court made two preliminary determinations. First, the defendant's California activities were "not so substantial or wide-ranging as to justify general jurisdiction over him."[9] Second, the cause of action did not arise out of or have such direct and substantial connection with these contacts as to conform to the traditional requirements of specific jurisdiction.[10] Nevertheless, a 4-3 majority concluded that in view of "all the circumstances, it would not offend due process"[11] to exercise specific jurisdiction over the defendant.

The *Cornelison* court thus unshackled itself from the bonds of traditional jurisdictional restrictions. By assuming jurisdiction under these facts, it expanded specific jurisdiction to its broadest extent and set forth a new and important approach to jurisdictional law.

The *Cornelison* formulation, however, implies an even more significant development. The court's analysis suggests a flexible jurisdictional approach based on the shifting interrelationships among essential jurisdictional considerations, with the strength of one factor compensating for the weakness of another. It is this continuous interaction and its jurisdictional consequences that constitute the essence of the *Cornelison* doctrine.

THE ANALYSIS: STRUCTURING THE *Cornelison* DOCTRINE

Once the California Supreme Court determined that neither general nor strict application of specific jurisdiction was appropriate, the traditional approach would have dictated a halt to further inquiry. The defendant's forum-state activities were not so pervasive as to permit adjudication in California over all causes of action regardless of their connection with the defendant's contacts. Furthermore, the cause of action asserted against the defendant did not arise out of or have a substantial connection with his forum-state activities in the clear and direct manner that the United States Supreme Court in *McGee v. International Life Insurance Co.*[12] deemed essential. In *McGee*, the cause of action based on an insurance contract was directly and substantially connected with the nonresident defendant's soliciting of that insurance policy in

9. 16 Cal. 3d at 148, 545 P.2d at 267, 127 Cal. Rptr. at 355.
10. *See* note 13 and accompanying text *infra*.
11. 16 Cal. 3d at 152, 545 P.2d at 269, 127 Cal. Rptr. at 357.
12. 355 U.S. 220 (1957).

the forum state.[13] In *Cornelison*, however, the jurisdictional relationship between the defendant's commercial contacts in California and the wrongful death action resulting from his allegedly negligent driving in Nevada was considerably more remote. The *Cornelison* majority, in fact, admitted that "the connection [was] not as direct as in cases such as *McGee v. International Life Insurance Co.*"[14] Nevertheless, the court reasoned that it could not "overlook the fact that defendant's contacts with California, although insufficient to justify general jurisdiction over him, [were] far more extensive than those of the defendant in *McGee*."[15] Accordingly, the court continued to pursue the jurisdictional inquiry. At that point, the *Cornelison* majority began breaking new ground in jurisdictional law.

The *Cornelison* approach was based on careful consideration of three factors. First, the defendant was involved in a "continuous course of conduct"[16] within the forum state. He had come to California approximately twenty times a year for the past seven years and, during that time, had conducted his trucking activities under a California license. Such on-going activities were, indeed, "far more extensive than those of the defendant in *McGee*."[17]

Second, although the cause of action asserted against the defendant did not arise directly out of or have a substantial connection with the defendant's forum-state activities, the court nonetheless found at least a rational connection—more properly, a rational nexus[18]—between the cause of action and the forum-state con-

13. The defendant was a nonresident insurance company whose only California activities were the solicitation of a single insurance policy and receipt of the subsequent premium payments. When the California plaintiff sued on this insurance contract, the Supreme Court held that a substantial connection existed between the cause of action (suit on the contract) and the defendant's forum-state contacts (solicitation of the contract in California and receipt of the premium payments). Consequently, the insurance company was subjected to California jurisdiction.

14. 16 Cal. 3d at 149-50, 545 P.2d at 268, 127 Cal. Rptr. at 356.

15. *Id.* at 150, 545 P.2d at 268, 127 Cal. Rptr. at 356.

16. *Id.* at 149, 545 P.2d at 267, 127 Cal. Rptr. at 355.

17. *Id.* at 150, 545 P.2d at 268, 127 Cal. Rptr. at 356.

18. The court, when describing this relationship, stated that "in our view, [there is] a substantial nexus between plaintiff's cause of action and defendant's activities in California." *Id.* at 149, 545 P.2d at 268, 127 Cal. Rptr. at 356. It is submitted, however, that the term "substantial nexus" was not meant to be synonymous with *arising out of* or *substantial connection.*

tacts.[19] Two important considerations established this rational nexus. The defendant's activities consisted primarily of his trucking operations in California. In fact, the driving of the truck, the very activity which gave rise to the cause of action, was "the essential basis of defendant's contacts with [California]."[20] Hence, a logical relationship existed between the cause of action and the forum-state activities.[21] The other consideration in creating the rational nexus was that the defendant was hauling goods to California when he collided with the plaintiff's automobile in Nevada. Therefore, at the time of the accident the defendant had already—though somewhat indirectly—commenced to further his commercial activities in the forum state by hauling freight toward California in anticipation of economic benefit upon its delivery. Thus, a connection can again be drawn between the cause of action and the defendant's commercial activities in the forum state. When these two subfac-

See note 4 *supra*. It was used, instead, to describe a situation in which a connection existed between the cause of action and the forum-state contacts but was not as direct and substantial as the above two phrases suggest. To avoid confusion (and because the author does not believe that there was a *substantial* nexus), the term *rational nexus* will be substituted.

19. Speaking for the three dissenting justices, Justice Clark strongly criticized the majority's finding of a jurisdictionally sufficient nexus between the cause of action and the defendant's forum-state contacts. He based his opposing view of a strict interpretation of the arising-out-of/substantial-connection requirement.

> The only conceivable connection between plaintiff's cause of action and defendant's activity inside California is that defendant was rolling toward (and plaintiff away from) its border. In this slight sense, the accident arguably "arose" from defendant's business in the state. However, the majority cites—and research has revealed —no authority supporting the conclusion that such a tenuous connection is sufficient to justify assertion of personal jurisdiction.

16 Cal. 3d at 153, 545 P.2d at 270, 127 Cal. Rptr. at 358 (dissenting opinion).

20. *Id.* at 149, 545 P.2d at 268, 127 Cal. Rptr. at 356.

21. *See* Threlkeld v. Tucker, 496 F.2d 1101 (9th Cir.), *cert. denied*, 419 U.S. 1023 (1974). The Ninth Circuit's interpretation of California's jurisdictional powers supports, by way of analogy, the *Cornelison* proposition that a rational nexus can be found where the cause of action arises not from the forum-state contact itself but from an essential part of such activity. In *Threlkeld*, a Connecticut resident instituted a number of suits in California against his former wife. The ex-wife counterclaimed in one of these suits and received judgment against her former husband for malicious prosecution. The former husband did not satisfy the judgment, and the ex-wife, in a separate action, sued on the judgment in California. Although the action on the judgment did not arise directly out of the former husband's litigious conduct in California, it was nevertheless "only one step removed from a diversity action upon a tort [malicious prosecution] committed by the non-resident defendant in California, and it [was] closely related to an elaborate course of forum-related activities carried on by the defendant." *Id.* at 1104. Accordingly, the court concluded that the cause of action was sufficiently connected with and arose out of the former husband's California activities. As in *Cornelison*, the defendant's forum-related activities—repeated litigation—constituted the essential basis of the cause of action—suit on the judgment against the defendant for malicious prosecution—and, as such, the nexus between them was sufficient to permit the exercise of jurisdiction.

tors combine, the resultant rational nexus between the defendant's forum-state activities and the cause of action offers even more support for the exercise of jurisdiction.

Third, the court considered whether it was "fair and reasonable"[22] to subject the defendant to California jurisdiction "in light of the inconvenience to [the defendant] in defending an action in this state, when balanced against the interests of plaintiff in suing locally and of the state in assuming jurisdiction."[23] The court, in balancing these factors of convenience,[24] found that the scales tipped in plaintiff's favor. Although some of the witnesses resided in Nevada, the plaintiff, who also witnessed the accident, resided in California. Additionally, evidence of the amount of plaintiff's damages was located in California.[25] The multi-state

22. 16 Cal. 3d at 150, 545 P.2d at 268, 127 Cal. Rptr. at 356.

23. *Id.*, 545 P.2d at 268, 127 Cal. Rptr. at 356.

24. Some of the issues considered under this balancing-of-conveniences test may be more appropriate for determining the applicability of the *forum non conveniens* doctrine. *See generally* Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). Although California recognizes *forum non conveniens* as a concept independent of jurisdiction (CAL. CIV. PROC. CODE § 410.30 (West 1973) and the judicial council's comments following thereafter), its courts have nevertheless allowed factors of *forum non conveniens* to be jurisdictional considerations as well. *E.g.*, Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969); Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 347 P.2d 1, 1 Cal. Rptr. 1 (1959). *See* Gorfinkel & Lavine, *Long-Arm Jurisdiction in California Under New Section 410.10 of the Code of Civil Procedure*, 21 HASTINGS L.J. 1163, 1199 (1970); Morley, *Forum Non Conveniens: Restraining Long-Arm Jurisdiction*, 68 NW. U.L. REV. 24 (1973); Note, *Forum Non Conveniens in California: Code of Civil Procedure Section 410.30*, 21 HASTINGS L.J. 1245, 1255-56 (1970).

The *Cornelison* court fully intended this balancing process to be a part of its jurisdictional analysis: "[W]hen, as here, justification for the exercise of jurisdiction is not obvious, the convenience of the parties is a factor to be considered in determining whether it would be fair to exercise jurisdiction over a defendant who resides in another state." 16 Cal. 3d at 150-51, 545 P.2d at 268, 127 Cal. Rptr. at 356. *See* Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969). Because justification for exercising jurisdiction is never obvious whenever the *Cornelison* doctrine is used, the factors of convenience must always be jurisdictional considerations. For the constitutional implications of incorporating factors of convenience into the jurisdictional inquiry, *see* notes 91-98 and accompanying text *infra*.

25. But examine the logic behind this reasoning. If the trial is held in California, the Nevada witnesses' testimony regarding the accident would probably be presented by deposition. Concededly, "evidence . . . on the amount of plaintiff's damages" was in California (16 Cal. 3d at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357), and the plaintiff, herself a witness to the accident, was available for in-court testimony. Nevertheless, it would have been more reasonable, at least in the context of this subfactor, to ob-

nature of the defendant's business also weighed in favor of requiring the defendant to defend the suit in California. Although the court did not endorse a per se risk-of-doing-business concept,[26] it nevertheless believed that because causing harm in a foreign state was a foreseeable event inherent in the character of the defendant's trucking business, the nature of his occupation should be given consideration.[27] Furthermore, the court reasoned that "from the perspective of a Nebraska resident faced with litigation outside his state, there is little difference in the burden between defending in Nevada or California."[28] Finally, California had an interest in providing a forum for its residents.[29]

The interplay of these three factors—continuous course of con-

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tain the live testimony of the neutral Nevada witnesses on the substantive issues of the case by opting for a Nevada forum.

26. Courts have disagreed about when litigation in a foreign state is part of the nonresident defendant's risk of doing business. Generally, the answer hinges on the nature of the defendant's business. *See* Gill v. Fairchild Hiller Corp., 312 F. Supp. 916 (D.N.H. 1970), in which the court held that manufacturers of airplanes and their component parts

> must know that it is probable that the aircraft in which the parts are used will be flown all over the United States . . . . The risk of suit being brought against them in any one of the fifty states is one of the risks that the defendants must bear because of the nature of their business.

Id. at 918; Edmundson v. Miley Trailer Co., 211 N.W.2d 269 (Iowa 1973). In *Edmundson*, the Iowa Supreme Court brought a Michigan defendant within its long-arm jurisdiction. It was alleged that the defendant had negligently installed a trailer hitch on the Iowa plaintiff's automobile. The resulting accident in Iowa was the only contact that the defendant had with the state. Nevertheless, the court reasoned that the defendant had put the

> trailer and hitch . . . into the stream of commerce. The [defendant] serviced an automotive product which obviously was going to travel on the highways of the United States. It [was] reasonable to assume all defendants should be subject to a lawsuit anywhere the trailer and hitch would travel throughout the nation if they were negligent.

Id. at 272. *See also* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961). *But cf.* Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th Cir. 1956) where, in the court's famous "tire hypothetical," fear was expressed that exercising jurisdiction under these circumstances might inhibit the free flow of commerce. *See generally* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 544-60.

27. Also relevant in this consideration is the extent of the defendant's interstate operations. *See* In-Flight Devices Corp. v. Van Dusen Air, Inc., 466 F.2d 220 (6th Cir. 1972), a holding which deemed pertinent the question of whether the defendant had entered into out-of-state transactions only occasionally or whether his operations had frequently extended across state lines. *See also* Mountain States Sports, Inc., v. Sharman, 353 F. Supp. 613 (D. Utah 1972) ("[D]efendants are engaged in interstate business dealings which suggest their general ability to litigate matters outside of [their state of residence]." *Id.* at 616). *See generally* Currie, *supra* note 26, at 544-60.

28. 16 Cal. 3d at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357.

29. *Id.*, 545 P.2d at 269, 127 Cal. Rptr. at 357.

duct within the forum state, a rational nexus between the cause of action and the forum-state contacts, and matters of convenience—provides the jurisdictional foundation for the *Cornelison* doctrine. This interaction can be better understood by reading the *Cornelison* case together with the landmark decision in California jurisdictional law, *Buckeye Boiler Co. v. Superior Court.*[30]

The *Buckeye* case involved a California plaintiff who had been injured in California when a boiler, manufactured by an Ohio defendant, exploded. The defendant's only California contacts, apart from the presence of the exploding boiler, were sales of pressure tanks to Cochin Manufacturing Company in San Francisco.[31] For five years preceding the accident the defendant had sold these tanks to Cochin. During the two previous years, these sales had produced annual gross sales of $25,000 to $35,000. However, the defendant had not sent the exploding tank to Cochin, and neither party was able to establish how the particular boiler arrived in California. Thus, the defendant's forum-state activities were not sufficient to warrant general jurisdiction, and the cause of action did not arise out of the defendant's activities with Cochin.[32]

Nevertheless, the California Supreme Court exercised jurisdiction over the *Buckeye* defendant. The court found that the defendant's sales to Cochin, coupled with the sale of the allegedly defective boiler which somehow found its way into the state, constituted economic activity in California "as a matter of 'commercial actuality'."[33] Moreover, the cause of action arose out of the defendant's

30. 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

31. "[The defendant] has no agent, office, sales representative, exclusive agency or exclusive sales outlet, warehouse, stock of merchandise, property, or bank account in California. It does not sell on consignment to, and has no commission agreement with, any person or entity in California." *Id.* at 897, 458 P.2d at 61, 80 Cal. Rptr. at 117.

32. Although the cause of action arose out of the explosion of one of the defendant's boilers in California, the mere occurrence of the injury in California was not, by itself, sufficient to justify the exercise of jurisdiction. *See* note 37 *infra.*

33. 71 Cal. 2d at 902, 458 P.2d at 64, 80 Cal. Rptr. at 120.

> A manufacturer engages in economic activity within a state as a matter of "commercial actuality" whenever the purchase or use of its product within the state generates gross income for the manufacturer and is not so fortuitous or unforeseeable as to negative the existence of an intent on the manufacturer's part to bring about this result.

Id., 458 P.2d at 64, 80 Cal. Rptr. at 120.

activities in the state. Although the cause of action did not arise out of the defendant's sales to Cochin, the court looked at the defendant's *total economic activity* in California—sales to Cochin as well as the direct or indirect sale of the exploding tank to a California customer—and concluded that the totality of the sales to California purchasers gave rise to the cause of action.[34] Finally, the court balanced the convenience factors and the state's interest in assuming jurisdiction and found them to weigh in the plaintiff's favor.

A comparison between *Buckeye* and *Cornelison* will contrast the underlying elements of the two decisions. In both cases, the defendants were engaged "in economic activity within [California] as a matter of 'commercial actuality'."[35] In each opinion, the court determined that the factors of convenience weighed in favor of a California forum. In *Buckeye*, however, the court found that the cause of action arose out of the defendant's forum-state activities in the strict *McGee* sense.[36] This close connection was absent in *Cornelison*.[37]

The *Buckeye* holding also presents procedural implications which are equally applicable to the *Cornelison* doctrine. A two-step process is suggested. First, the plaintiff has the burden of demonstrating that the court may assume jurisdiction over the defendant. He must establish that the nonresident defendant was involved in economic activity within the state as a matter of "commercial actuality"[38] and must then make the jurisdictional connection between

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34. *See* Gorfinkel & Lavine, *supra* note 24, at 1194-96.

35. 71 Cal. 2d at 902, 458 P.2d at 64, 80 Cal. Rptr. at 120. In *Buckeye*, the defendant's economic activity within California, "as a matter of commercial actuality," was evidenced by its sales of pressure tanks to Cochin as well as the sale of the exploding tank which somehow found its way into California. In *Cornelison*, this economic activity was established by the defendant's California trucking activities, his license from the Public Utilities Commission of California, and his previous employment with a California brokerage firm.

36. *See* text accompanying note 34 *supra*, and *see* note 13 *supra*.

37. Another important distinction between *Buckeye* and *Cornelison* is that in the former, the injury happened in California, whereas in the latter the accident took place in Nevada. However, in *Buckeye* the mere occurrence of the tort in California was not, by itself, sufficient to warrant jurisdiction. Only if the requisite forum-state contacts, a substantial connection between these contacts and the cause of action, factors of conveniences and interests favoring a local forum, and lack of unforeseeability that its product would arrive into the forum state are established, may jurisdiction over the nonresident manufacturer be exercised.

38. The *Cornelison* proposition is not limited exclusively to commercial contacts in the forum state. Activity within the forum state in a nonbusiness context may also be relevant. *See* text accompanying note 71 *infra*.

this activity and the cause of action. Once these facts have been shown, the court will make an assumption of jurisdiction.

The second step shifts to the defendant the burden of rebutting the propriety of this presumption. He must prove that although jurisdiction over him may be assumed, doing so in this case is neither fair nor reasonable. The defendant must therefore demonstrate that his inconvenience in defending the suit locally is greater than the interests of the plaintiff and the state in litigating the matter in the forum state.[39]

The foregoing analysis creates a basis for defining the *Cornelison* doctrine. The principle of the doctrine is that when a nonresident defendant's forum-state activities are neither so extensive as to warrant general jurisdiction nor so substantially connected with the cause of action as to permit the exercise of specific jurisdiction in the strict *McGee* sense, the defendant may nonetheless be subjected to specific jurisdiction if the plaintiff can establish that the nonresident defendant has engaged in the requisite course of conduct within the state,[40] if the plaintiff can further show that at least a rational nexus exists between the cause of action and the forum-state conduct, and if the defendant is unable to demonstrate that the factors of convenience, when weighed against the plaintiff's and the state's interests in a local tribunal, favor another forum.

APPLICATION OF THE *Cornelison* DOCTRINE: HOW FAR WILL IT REACH?

The *Cornelison* doctrine sets forth a flexible jurisdictional approach. It is grounded upon the balancing of the three *Cornelison* factors to determine in each instance whether the exercise of jurisdiction is appropriate. In order to illustrate this interplay and to forecast the doctrine's reach, it is necessary to examine the *Cornelison* proposition in terms of its application to a number of fact patterns.

39. 71 Cal. 2d at 905 n.9, 458 P.2d at 66 n.9, 80 Cal. Rptr. at 122 n.9. In *Buckeye*, a products liability case, the defendant was additionally required to show that the arrival of the exploding boiler was so fortuitous and unforeseeable as to "manifest lack of purposeful activity" in California. *Id.* at 904, 458 P.2d at 65, 80 Cal. Rptr. at 121.

40. The extent of the forum-state activities may be less than that needed for general jurisdiction, but it must be more than that required for the traditional concept of specific jurisdiction.

The Requirement of a Continuous Course of Conduct Within the Forum State

An interesting fact situation for examining a continuous course of conduct within the forum state is presented by *Dufour v. Smith & Hammer, Inc.*[41] The plaintiff, a Maine resident, was injured in a highway accident in Canada.[42] The collision occurred as the corporate defendant's[43] truck was approaching the Maine border to pick up cargo in Maine. This particular shipment contract had been arranged by a Maine brokerage firm. Shortly after the accident, the truck entered Maine to obtain the cargo which it subsequently delivered at its South Carolina and Georgia destinations. The plaintiff brought suit in Maine, basing jurisdiction on the fact that the cause of action arose out of the defendant's business transactions in that state. To establish this connection, the plaintiff argued that the "accident would not have occurred had it not been for the arrangements made by the corporate defendant to receive a truckload of potatoes [in Maine]."[44] The court, however, rejected plaintiff's contention. The shipment contract that brought the defendant into Maine,[45] the court reasoned, was only a precondition to the accident, not its cause.[46] Furthermore, the events relevant to the cause of action were the alleged negligence and the resulting injuries, both of which occurred in Canada. Thus, the court did not perceive the requisite causal connection between the cause of action and the defendant's forum-state acts and consequently dismissed the complaint for lack of personal jurisdiction.[47]

41. 330 F. Supp. 405 (D. Me. 1971).

42. A Canadian plaintiff was also involved in this action. The court, however, made no distinction between the two plaintiffs, treating them as one.

43. There were two defendants involved: the corporate defendant (a trucking company) and the individual defendant (the driver of the truck who was employed by the corporate defendant). The court's rationale, however, was made applicable to both defendants.

44. 330 F. Supp. at 407.

45. The court assumed, for the purpose of argument, that the shipment contract constituted transaction of business in Maine. Therefore, under the then existing Maine long-arm statute, ME. REV. STAT. tit. 14, § 704 (current version at ME. REV. STAT. tit. 14, § 704-A (Supp. 1976-77)), if the transaction of business gave rise to the cause of action, jurisdiction could be exercised.

46. Contrast this analysis with that of the *Cornelison* court in establishing the rational nexus between the cause of action and the forum-state activities. *See* text following note 21 *supra*. Note also that unlike the defendant in *Cornelison*, the *Dufour* defendant was coming into the forum state in performance of a shipment contract brokered in that state.

47. The plaintiff attempted to further bolster his arising-out-of argument by showing that after the accident, the defendant's truck entered Maine, obtained the cargo, and delivered it to its destination. The court, however, summarily dismissed this contention on the grounds that the cause of action

Under the *Cornelison* doctrine, the same result would have been reached, but for a different reason. The *Cornelison* formulation does not require a "direct causal connection"[48] between the cause of action and the forum-state activities, but simply a rational nexus. This rational nexus was present in *Dufour*.[49] Rather, the missing element was the on-going forum-state conduct that existed in the California case. If the *Dufour* defendant's only contact with Maine was the brokerage contract, this isolated contact was not sufficient to support the exercise of jurisdiction. The *Cornelison* doctrine demands more. It requires that when the jurisdictional connection between the cause of action and the forum-state contacts is only a rational nexus, such a nexus be supported by more substantial forum-state activities than merely an isolated transaction.[50]

The Requirement of a Rational Nexus and Matters of Convenience and Interests

A starting point for an examination of the rational-nexus requirement is provided by a 1974 Pennsylvania case, *Bork v. Mills*.[51] In that case the defendant's truck collided with the plaintiff's automobile in Virginia. The defendant was a Maryland resident who conducted a portion of his trucking business in Pennsylvania.[52] The plaintiff was a Pennsylvania resident.[53]

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arose before this event had occurred: "[A] cause of action cannot be said to have 'arisen from' the transaction of any business occurring *after* the cause of action arose." 330 F. Supp. at 407.

48. *Id.*

49. As in *Cornelison*, the driving of the truck, which constituted the essential basis of the *Dufour* defendant's forum-state contacts, was also the activity which gave rise to the cause of action. Furthermore, the *Dufour* truck driver, like the *Cornelison* defendant, was en route to the forum state where he was to obtain cargo for delivery elsewhere (although in *Cornelison*, the defendant was also hauling freight into the forum state for delivery). Thus, a rational nexus was established between the cause of action and the *Dufour* defendant's Maine contacts.

50. For a case to which a similar analysis would apply, see Crimi v. Elliott Bros. Trucking Co., 279 F. Supp. 555 (S.D.N.Y. 1968).

51. 458 Pa. 228, 329 A.2d 247 (1974).

52. The extent and frequency of the defendant's trucking operations in Pennsylvania were not specified. The court, however, noted that prior to the accident, the defendant's Pennsylvania trucking operations had been conducted in such manner as to be considered "doing business" in Pennsylvania under the then existing Act of July 1, 1970, Pub. L. No. 152, § 4, 12 PA. CONS. STAT. § 341 (repealed 1972).

53. Brief for Appellee at 2, Bork v. Mills, 458 Pa. 228, 329 A.2d 247 (1974).

On the basis of the defendant's trucking activities, the plaintiff attempted to bring the defendant under Pennsylvania jurisdiction. However, the Supreme Court of Pennsylvania, in a 4-3 decision, affirmed the dismissal of plaintiff's complaint. Basing the dismissal on lack of jurisdiction, the court stated that neither were the defendant's Pennsylvania activities extensive enough to warrant the exercise of general jurisdiction nor did the cause of action "arise out of any business which [the defendant had carried on] within the Commonwealth."[54]

If the *Bork* case had been decided under the *Cornelison* doctrine, the same result would probably have been reached. Although both the *Cornelison* requirements of a continuous course of conduct within the forum state[55] and the questions of convenience and interests in subjecting the nonresident defendant to Pennsylvania jurisdiction[56] were determined favorably, the doctrine's rational-nexus test remained unsatisfied. The problem in making the connection between the cause of action and the defendant's commercial forum-state activities stemmed from the fact that, unlike *Cornelison*, the *Bork* opinion did not specify whether the defendant was on his way to Pennsylvania either to make a delivery or to pick up cargo for delivery elsewhere. If he were not so routed, this consideration, essential in establishing *Cornelison's* rational nexus between the cause of action and the defendant's forum-state contacts, would be absent in the instant case.[57]

The next issue to be examined is the *Cornelison* balancing of convenience-and-interests requirement. A study of *Odom v. Thomas*[58] serves both to focus on this factor and to further

54. 458 Pa. at 231, 329 A.2d at 249. It was this conclusion to which the three dissenting justices excepted. They believed that if a nonresident is "doing business" in Pennsylvania (*see* note 52 *supra*), jurisdiction may be exercised without imposing the additional requirement that the cause of action arise out of such activities.

55. Because the defendant truck driver satisfied the Pennsylvania doing-business requirement (*see* note 52 *supra*), apparently he also satisfied *Cornelison's* similar continuous-course-of-conduct requirement.

56. The factors of convenience and interests appear to be the same as in *Cornelison*. The *Bork* plaintiff was a resident of the forum state, and therefore both she and the state had an interest in litigating the matter in Pennsylvania. Furthermore, the defendant was engaged in interstate business, a fact which suggests that litigation in a foreign tribunal was a foreseeable event. Finally, a Maryland resident faced with the prospect of foreign litigation probably perceives little difference in the burden of defending either in Virginia or in Pennsylvania. (Note: Because the issue of the availability of witnesses was not raised in *Bork*, it was omitted from this discussion.)

57. *See* text following note 21 *supra* and text accompanying notes 64-69 *infra*.

58. 338 F. Supp. 877 (S.D. Tex. 1971).

analyze the rational-nexus criterion. Again, the suit arose out of a highway accident. The automobile of a Texas plaintiff collided in Arkansas with the truck of an Alabama defendant.[59] The plaintiff brought suit in a Texas federal district court. The Alabama defendant's contacts with Texas were similar to those of the *Cornelison* defendant. The defendant operated his interstate trucking business in various states, including Texas. As in *Cornelison*, the defendant had express authority from the forum state to haul freight within its borders.[60] Yet, despite the defendant's forum-state contacts, jurisdiction was not exercised.

Both conceptual and factual differences distinguish *Odom* from *Cornelison*. Conceptually, the distinction lies in the very different judicial treatment of the similar "interests" present in both cases. *Cornelison* held that "California [had] an interest in providing a forum since plaintiff is a California resident."[61] The *Odom* court saw no such interest. Rather, the court believed that Arkansas, the state in which the accident occurred, had stronger interests than did Texas in granting relief to the plaintiff. Furthermore, the *Odom* tribunal gave weight to the fact that Arkansas was "a neutral jurisdiction with regard to plaintiff and defendants, and . . . [was] located approximately midway between the respective states of the parties."[62] In addition, the court reasoned that because Arkansas substantive law was involved, the Arkansas courts could better interpret those laws.[63] Therefore, accepting the *Odom* view on the weighing of interests and convenience, a balance favoring the exercise of jurisdiction would be difficult to strike in any case in which the injury giving rise to the cause of action occurred outside the forum state.

Factually, the only major distinction between the *Odom* and *Cornelison* situations was that, at the time of the accident, the *Odom* defendant was not on his way to the forum state. As previously discussed, this factor was important in establishing the

59. Actually, two defendants were involved: the truck owner and the individual driver. However, for the purpose of determining jurisdiction, the court treated the two defendants as one.

60. The defendant held a permit from the Texas Railroad Commission, which licensed him to conduct the necessary portion of his interstate trucking business in Texas.

61. 16 Cal. 3d at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357.

62. 338 F. Supp. at 879.

63. *Id.*

necessary rational nexus in the *Cornelison* ruling.[64] Although it did not expressly state the proposition, the *Odom* court may likewise have understood the significance of this absent element. The court's discussion of the "unbridgeable gap separating defendant's activities in Texas from the incident involved in this litigation"[65] was commenced by emphasizing that the defendant was not scheduled to haul freight through Texas during this particular trip.[66] The actual weight given to this factor cannot be determined, however, because the court did not refer to it again. Instead, the *Odom* court's remaining discussion of the arising-out-of issue came entirely in response to the plaintiff's argument. The plaintiff contended that in the instant case, as in products liability cases, the defendant's knowledge that an accident might occur in the forum state should be the major jurisdictional determinative. Therefore, because the *Odom* defendant could reasonably foresee that an accident might result from his trucking operations in Texas, this foreknowledge should be sufficient to make him amenable to Texas jurisdiction—even if the accident occurred outside the forum state and the defendant was not, at that time, heading into the state. The court, however, rejected the plaintiff's argument. It held that because this was not a products liability case but rather an ordinary negligence situation, the plaintiff's reasoning did not apply.

The court's position was correct. In products liability cases, the manufacturer purposefully sends its goods into other states for purchase and use. It can foresee that shipping its products into another state may result in the product injuring people there and that litigation in that state may ensue. Therefore, if a defective product manufactured in state *A* is shipped to and purchased in state *B* and injures the consumer in state *C*, the nonresident manufacturer may be subjected to jurisdiction in state *B*. It is the manufacturer's purposeful activity in distributing the product in that state and its knowledge that such activity may cause injury there,

64. *See* text following note 21 *supra*.

65. 338 F. Supp. at 878.

66. "Defendant's agent was en route from Alabama to Kansas by way of Arkansas and Oklahoma. At no time during the pendency of this particular trip was [defendant's truck] to be routed through any part of Texas." *Id.* at 878-79.

Texas appears to be the only jurisdiction where this element had been a jurisdictional consideration. *See* Frye v. Ross Aviation, Inc., 523 S.W.2d 500 (Tex. Civ. App. 1975). It can thus be inferred that had the *Odom* defendant been on his way to Texas at the time of the accident, jurisdiction along the *Cornelison* lines *might* have been exercised.

rather than the place where the tort actually occurred, that should be pivotal in determining jurisdiction.[67]

By contrast, in simple negligence cases, the wrongful act and the resulting injury are not geographically separable. The defendant does not purposefully extend his injury-causing activity beyond the state in which the tort occurred. Unlike products liability cases, the defendant cannot anticipate that his liability-producing conduct in one state will result in injury in another. Consequently, in ordinary negligence cases, the place where the tort actually occurred is the exclusive situs of the defendant's relevant activities and is therefore of primary jurisdictional significance.

In the trucking cases, however, a special situation may sometimes exist. If, at the time of the accident, the defendant was *en route to the forum state*, the jurisdictional question can be analogized to the products liability cases. With reference to the above products liability hypothetical, it should be recalled that it is the manufacturer's activities in a state and its knowledge that an accident might occur there, rather than the place where the injury actually occurred, that is of jurisdictional importance. Therefore, if a nonresident defendant manufactures a defective product in state *A*, ships it to state *B*—where the manufacturer has previously sold its products—and, while en route to that state, the product injures a state *B* resident in state *X*, jurisdiction over the manufacturer may nonetheless be exercised in state *B*. The manufacturer, having intended that this product should reach state *B*, could have foreseen that this *very* accident might have occurred there. Therefore, when considering that the defendant also had purposeful contacts with the forum state and that this action had some relationship to its forum-state activities, requiring the manufacturer to litigate this matter in state *B* is not so unfairly surprising as to offend due process. Likewise, a truck driver heading toward state *B*—where he has regularly operated a portion of his trucking business—can anticipate that he may be involved in a highway collision in that state and that the injured resident may sue him locally. Thus, if while en route to state *B* the defendant collides with the automobile of a state *B* resident, defending the resulting law suit in state B is no more unreasonable than in the products liability situation.

67. *See* Williams v. Brasea, Inc., 320 F. Supp. 658 (S.D. Tex. 1970). *See also* Singer v. Walker, 15 N.Y.2d 443, 464, 209 N.E.2d 68, 80, 261 N.Y.S.2d 8, 24 (1965); Currie, *supra* note 26, at 554-55.

Again, the defendant could have foreseen that this *very* accident might have happened in state *B* had the collision occurred but a few miles later. Furthermore, the defendant had purposeful contacts with the forum state, and there was a rational nexus between these activities and the forum-state contacts. Accordingly, the exercise of jurisdiction over the defendant truck driver in state *B* is fair and reasonable.

In *Odom*, however, the defendant was not en route to the forum state. Although this was the *kind* of accident that could have occurred in Texas, that *very* accident could not, during this particular trip, have occurred there. Consequently, the defendant's trucking activities did not have the requisite connection with the cause of action to support the exercise of jurisdiction. Accordingly, the court concluded that the instant case was merely a simple tort action in which "the situs of the tort [was] of controlling significance"[68] and dismissed the complaint.[69]

The Cornelison *Doctrine in a Social-Commercial Setting*

To this point, the analysis has centered on purely commercial involvement in the forum state. However, situations may arise in which the defendant's business activities are of secondary importance. Assume that a Nebraska school teacher comes to California each summer. For the past seven years, he has leased a summer cottage in San Diego for a three-month period. During these three months, he not only vacations in California but also attends a local university to fulfill a Nebraska requirement that educators enroll in summer graduate programs. This summer the school teacher has routed his California trip through Arizona, where he had intended to spend three weeks visiting relatives before proceeding to California. While driving to Arizona, the school teacher is involved in an automobile accident in Nevada with a California resident. The question then arises whether the *Cornelison* doctrine would subject the school teacher to California jurisdiction.

68. 338 F. Supp. at 879.

69. *See also* Curran v. Rouse Transp. Corp., 42 Misc. 2d 1055, 249 N.Y.S.2d 718 (1964). In *Curran*, a New York resident was involved in an automobile collision with the Vermont defendant's truck. The defendant's trucks had been coming to New York twice daily to provide mail service. The accident occurred in Vermont, though it is not clear whether, at the time of the accident, the defendant's truck was en route to or coming from New York in performance of its mail service contract. Subsequently, the plaintiff brought suit in New York. A New York court declined to exercise jurisdiction because the defendant's New York trucking activities did not give rise to a cause of action based on a Vermont highway accident.

The answer is found in an examination of the defendant's contacts with the forum state. It would seem that the defendant does not engage in a continuous course of conduct within California as a matter of *commercial* actuality, at least not in the manner of the *Cornelison* and *Buckeye* defendants. Nevertheless, each summer for the past seven years the defendant has purposefully availed himself of the facilities and benefits that California provides for those within its borders. He has enjoyed the state's privileges and invoked the state's protections from civil and criminal harms.[70] Furthermore, the defendant has attended a California university to satisfy a professional requirement. Hence, through his association with California, the defendant has attained economic benefits by receiving the training needed to retain his present employment. In view of the defendant's activities in both the social and commercial context, his contacts more than satisfy the *Cornelison* requirement of a continuous course of conduct within the forum state.[71]

A more difficult task is establishing the rational nexus between these California contacts and the cause of action. Unlike *Cornelison*, the driving of the defendant's automobile is not an essential basis of the defendant's forum-state contacts. Even if it were necessary for the school teacher to drive his automobile to California and, once there, to continue to use it, driving is simply not as essential to his forum-state activities as it was to the *Cornelison* truck driver. Furthermore, in *Cornelison* the accident occurred as the defendant was en route to California. But in the instant facts the defendant was driving toward an Arizona destination, and only later did he plan to resume his trip toward California. Consequently, the nexus between the cause of action and the defendant's contacts with the forum state is not as strong as in *Cornelison*.

The balancing of convenience and interests in the hypothetical situation can be made along the *Cornelison* lines. The plaintiff is a California resident and, of course, California has an interest in

70. It is doubtful, however, that social contacts alone would be sufficient to support jurisdiction in the *Cornelison*-type fact pattern. Because the defendant derives no economic—or equally substantial—benefits from his forum-state activities, subjecting him to California jurisdiction for such a relatively remote cause of action would be unfair and unreasonable.

71. *See also* Threlkeld v. Tucker, 496 F.2d 1101 (9th Cir.), *cert. denied*, 419 U.S. 1023 (1974), in which the defendant's forum-state activities were in the litigious context. *See* note 21 *supra*.

providing a forum for its citizens in which to litigate their grievances. However, an important makeweight in *Cornelison*, the multi-state character of the defendant's occupation, appears to be absent here.[72] The implication in *Cornelison* was that because an interstate truck driver could foresee the possibility of a highway collision in distant states, defending such suits in foreign tribunals would not be unreasonable. However, consideration of the interstate nature of the school teacher's annual trips, coupled with his subsequent use of his automobile in California during his three-month stay, would indicate that he, too, could reasonably anticipate causing injury to residents in distant forums, and in particular to Californians. Moreover, as in *Cornelison*, the defendant is a Nebraska resident "faced with litigation outside his state . . . [for whom] there is little difference in the burden between defending in Nevada or California."[73]

Thus, while the nexus between the cause of action and the defendant's forum-state activities is somewhat remote, the defendant's rather extensive forum-state activities (though not sufficient for general jurisdiction), coupled with the interest in and the relative convenience of a local forum, appear to compensate for the weak nexus and permit exercising jurisdiction over the Nebraska school teacher.[74]

Implications of the Cornelison *Doctrine*

After an examination of these four fact situations, two basic conclusions may be made concerning the *Cornelison* doctrine. First, as a prerequisite to jurisdiction, each of the three *Cornelison* factors —continuous course of conduct within the forum state, a rational nexus between the cause of action and the forum-state contacts, and matters of convenience and interests—and their various subfactors must, to some degree, be present. This conclusion is highlighted by the trucking cases in which each fact situation lacked

72. *See* text accompanying note 89 *infra*.

73. 16 Cal. 3d at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357.

74. In this context, *see also* Hess v. Pawloski, 274 U.S. 352 (1927). In *Hess* the Supreme Court allowed the exercise of in personam jurisdiction over a nonresident defendant whose only relevant forum-state contact was an automobile accident. Therefore, if a state may exercise jurisdiction over a motorist based on a single, fortuitous contact, it is at least as reasonable to require the motorist to defend that suit in the state where he purposefully conducted a continuous course of conduct. Thus, if the three *Cornelison* factors have been met, subjecting the Nebraska school teacher to jurisdiction in California—the state to which both parties have a closer relationship than a mere casual automobile accident—would be as appropriate as requiring him to defend the suit in Nevada, the site of the accident.

a component that the *Cornelison* court deemed indispensable to the exercise of jurisdiction.[75]

But a more important observation is suggested by the Nebraska school teacher hypothetical.[76] There the nexus between the cause of action and the forum-state activities was not as direct as that in *Cornelison*. However, because the Nebraska school teacher spent one-fourth of each year in California, his forum-state contacts, though not sufficient to merit general jurisdiction, were certainly more substantial than those of the *Cornelison* defendant. Therefore, as the extent of the defendant's contacts allowed *Cornelison* to move away from the direct causal relationship between the cause of action and the forum-state activities that the *McGee* court expounded, likewise the more substantial nature of the hypothetical defendant's contacts with California should justify the exercise of jurisdiction even though the nexus is more remote than in *Cornelison*.

This second observation marks the significance of the *Cornelison* doctrine. It suggests a mode of jurisdictional analysis that is based on the balancing of the three *Cornelison* factors to determine if exercising jurisdiction is appropriate. If the factors of convenience and interests weigh progressively more in favor of jurisdiction, as the nonresident defendant's contacts grow from isolated forum-state transactions to more wide-ranging activities, the connection between these contacts and the cause of action needed to justify jurisdiction becomes less and less, until the conduct is so continuous and systematic that jurisdiction over even unrelated causes of action is warranted.

THE QUESTION OF CONSTITUTIONALITY

The final issue to be resolved is whether the *Cornelison* decision is constitutional. The California long-arm statute provides that a "court of this state may exercise jurisdiction on any basis not

75. It is not suggested that the respective courts would have exercised jurisdiction even if the absent factors had been present. To the contrary, such a result, prior to *Cornelison*, would have been highly unlikely. It is merely noted that each of the trucking cases can be factually distinguished from *Cornelison*.

76. A similar conclusion may also be drawn from Threlkeld v. Tucker, 496 F.2d 1101 (9th Cir.), *cert. denied*, 419 U.S. 1023 (1974). *See* notes 21 & 71 *supra*.

inconsistent with the Constitution of this state or of the United States."[77] With such sweeping language, California has adopted the due process limits of the fourteenth amendment as its statutory guideline. Accordingly, its courts' jurisdictional determinations are constitutional in nature and must therefore be examined in light of the standards set forth by the United States Supreme Court.

Following its decision in *International Shoe Co. v. Washington*,[78] the United States Supreme Court consistently extended states' jurisdictional powers.[79] However, in the 1958 case of *Hanson v. Denckla*,[80] a divided Court[81] interrupted this growing trend and set forth express limits on the states' long-arm reach. Therefore, the issue is whether the *Cornelison* decision stays within the constitutional boundaries delineated by *Hanson*.

The subject matter of the *Hanson* controversy was a trust instrument executed in Delaware by Mrs. Donner, a Pennsylvania resident. Subsequently, Mrs. Donner moved to Florida. The income from the trust was mailed to her Florida residence, and from there she occasionally communicated with the Delaware trustee regarding the administration of the trust. Upon her death, suit was brought in Florida to determine to whom the trust corpus would pass. The Delaware trustee was made a defendant, and the Florida Supreme Court found that it could exercise jurisdiction over it.

The United States Supreme Court, however, expressly rejected Florida's claim of jurisdiction. The Court began with the premise that, unlike *McGee*, the cause of action did not arise out of any contacts which the Delaware trustee had with Florida. Further-

77. CAL. CIV. PROC. CODE § 410.10 (West 1973).

78. 326 U.S. 310 (1945). *See* note 1 *supra*.

79. *See* McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); Traveler's Health Ass'n v. Virginia, 339 U.S. 643 (1950). *See generally* Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts, From* Pennoyer *to* Denckla*: A Review*, 25 U. CHI. L. REV. 569 (1958); Note, *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909 (1960).

80. 357 U.S. 235 (1958).

81. It was a 5-4 decision, with Mr. Chief Justice Warren writing the majority's opinion. The *Hanson* ruling has been criticized by a number of courts and commentators, with a few jurisdictions taking the *Hanson* minority's fundamental-fairness approach. Casad, *Long Arm and Convenient Forum*, 20 U. KAN. L. REV. 1, 11-12 (1971). *See* Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966); Reese & Galston, *Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249, 256-57 (1959); Comment, *Tortious Act as a Basis for Jurisdiction in Products Liability Cases*, 33 FORDHAM L. REV. 671, 685-86 (1965).

more, the trustee did not "purposefully [avail] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."[82] Finally, the Court held that despite Florida being the most convenient forum for litigation,[83] jurisdiction could not be exercised absent the requisite minimum forum-state contacts.

In light of these limitations, the *Cornelison* decision appears, initially, to be of dubious constitutional validity. The cause of action did not arise out of the defendant's forum-state contacts in the clear and direct manner that the strict *McGee* view of specific jurisdiction requires, and his forum-state activities were not substantial enough to support general jurisdiction. At this point, *Hanson* would rule out jurisdiction, regardless of the other factors that the *Cornelison* court so strongly emphasized.

If, however, the factual situation in *Hanson* was the determining factor in the denial of jurisdiction,[84] the *Cornelison* case can be distinguished. Unlike *Hanson*, the *Cornelison* defendant purposefully availed himself of the privilege of conducting his activities in the forum state.[85] Also, whereas *Hanson* involved an isolated transaction in Florida,[86] the *Cornelison* defendant had an on-going

82. 357 U.S. at 253.

83. Mrs. Donner and most of the interested parties (beneficiaries and appointees) were Florida residents.

84. Such a narrow interpretation is suggested by Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966). *See* Foster, *Expanding Jurisdiction Over Nonresidents*, 32 WIS. B. BULL. 3, 20 (Supp. Oct. 1959): The *Hanson* case "very probably will be confined to its precise facts." *But see* Leflar, *Conflict of Laws*, 34 N.Y.U. L. REV. 20 (1959):

> It may confidently be predicted that the facts in *Hanson v. Denckla* themselves mark the outer limits of permissible exercise of judicial jurisdiction under the due process clause, and that the exercise of jurisdiction will hereafter be sustained, in keeping with the *McGee* trend, on sets of facts only narrowly distinguishable from those in *Hanson v. Denckla* . . . .

Id. at 33-34.

85. The *Cornelison* defendant's forum-state contacts, as in *Buckeye*, were sufficient to establish his California conduct "as a matter of commercial actuality." *See* note 35 *supra*. Because *Buckeye* had "equated engaging in economic activity within [the forum state] 'as a matter of commercial actuality' with *Hanson's* requirement of purposeful activity within the state" (71 Cal. 2d at 902, 458 P.2d at 64, 80 Cal. Rptr. at 120), it follows that the *Cornelison* defendant had likewise satisfied *Hanson's* requirement of purposeful conduct within the forum state.

86. "The defendant trust company ha[d] no office in Florida, and transact[ed] no business there. None of the trust assets ha[d] ever been held or administered in Florida, and the record disclose[d] no solicitation of

business relationship in California.[87] Therefore, because the *Hanson* Court dealt only with a single transaction and was not presented with an on-going business relationship, its arising-out-of requirement need not be as stringently applied in the latter circumstance. Thus a lesser connection between the cause of action and a continuous course of conduct within the forum state—such as a mere rational nexus—might be constitutionally sufficient to support jurisdiction.

Commentators have also interpreted the *Hanson* decision as suggesting that in order for a court to exercise jurisdiction, a nonresident defendant must be able to anticipate that his forum-state contacts might lead to litigation in the state.[88] This requirement was satisfied in *Cornelison*, for the very nature of the defendant's interstate trucking business implied "the *foreseeable* circumstance of causing injury to persons in distant forums."[89] But perhaps a better response would be to merely reject this foreseeability test as a major determinative and to consider it as simply another factor to be weighed in the jurisdictional inquiry.[90]

A final obstacle must be overcome. The *Hanson* Court emphasized that a state "does not acquire . . . jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation"[91] but rather by having the requisite forum-state contacts. Thus, although considerations of convenience dictated a Florida forum, because of the lack of the necessary contacts, the *Hanson* Court did not allow these considerations to be factored into the jurisdictional formula. Nevertheless, it appears that the *Cornelison* court's use of convenience elements in its jurisdictional determination process can be reconciled with *Hanson*.

In *Hanson*, the factors of convenience were presented as the principal justification for extending in personam jurisdiction over the nonresident defendant. But in *Cornelison*, these factors are treated as an added *requirement* for the exercise of jurisdiction.[92] Fur-

business in that State either in person or by mail." 357 U.S. at 251. The defendant's only Florida contact resulted from Mrs. Donner's bringing the trust agreement with her into that state.

87. *See* note 35 *supra*.

88. *See* Casad, *supra* note 81, at 11; Currie, *supra* note 26, at 578-79; Comment, *supra* note 81, at 683-86.

89. 16 Cal. 3d at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357 (emphasis added).

90. *See* Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966). *See also* Currie, *supra* note 26, at 556-60.

91. 357 U.S. at 254.

92. At times, the factors of convenience and interests may be so compelling that they compensate for a weaker link in the jurisdictional chain. In

thermore, unlike *Hanson*, the *Cornelison* defendant had purposeful contacts in the forum state. If *Hanson* is strictly interpreted, its total disregard of convenience considerations would apply only to situations in which purposeful activity within the state has not been established.[93] But once this jurisdictional threshold has been crossed, the *Hanson* limitations are no longer controlling.[94] Under these circumstances, treating the questions of convenience[95] together with the interest of the plaintiff[96] and the forum state[97]

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this respect, these considerations may be viewed as expanding jurisdiction. However, even in this situation, these factors must be supported to an acceptable level by the other *Cornelison* factors. Therefore, factors of convenience are never the principal justifications for exercising jurisdiction. Rather they interact with the other requirements to strike the proper balance for making the exercise of jurisdiction fair and reasonable. *See* text following note 76 *supra*.

93. In *International Shoe, Traveler's Health*, and *McGee*, the Supreme Court considered the factors of convenience in reaching its jurisdictional decisions. Indeed, in *McGee*, this was a most significant consideration. The *Hanson* Court did not purport to overrule these cases. Rather, it merely limited the seemingly unrestrained trend of jurisdictional growth that followed. Therefore, considerations of convenience and interests remain viable jurisdictional factors when, as in *International Shoe, Traveler's Health*, and *McGee*, at least a purposeful contact with the forum state has been established.

94. *See* Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 899, 458 P.2d 57, 62, 80 Cal. Rptr. 113, 118 (1969).

95. For a criticism of incorporating factors of convenience into the jurisdictional equation rather than applying them only to *forum non conveniens* considerations, see Morley, *supra* note 24.

96. A separate question is whether the convenience of the *plaintiff* is a proper jurisdictional consideration. When the *International Shoe* Court referred to an "estimate of the inconveniences" (326 U.S. at 317) as applicable in determining jurisdiction, it was speaking in terms of the defendant's inconvenience, not of the plaintiff's. In *McGee*, however, the Court did consider the interests of the plaintiff and noted that local "residents would be at a severe disadvantage if they were forced to follow the [defendant] to a distant State in order to hold it legally accountable." 355 U.S. at 223. Because *McGee* was not overturned by *Hanson*, the plaintiff's interests remain a usable ingredient in the jurisdictional formula. *See* Traveler's Health Ass'n v. Virginia, 339 U.S. 643 (1950); Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966). *See also* Note, *supra* note 79, at 924.

97. The forum state's interest in providing its residents with a local tribunal was implicitly recognized by the *Hanson* Court as a relevant factor in the jurisdictional inquiry. The Court, in distinguishing *Hanson* from *McGee*, noted that California had a specific statutory interest in bringing the *McGee* defendant into the forum state: CAL. INS. CODE §§ 1610-11 (West 1972) subjected nonresident insurance corporations to California jurisdiction for actions based on insurance contracts with California residents. However, no such interest existed in *Hanson*. The logical inference is that if a state manifests an interest in providing a local forum for its residents—

as jurisdictional factors would not offend due process.[98]

From the foregoing, it appears that the *Cornelison* decision is constitutional. However the question remains whether its broad implications, as evidenced by the Nebraska school teacher hypothetical, are likewise constitutional. In the assumed fact situation, the three *Cornelison* factors, while differing in degree from *Cornelison*, were nonetheless present. It is their presence that is essential in establishing the constitutionality of jurisdiction; for, as was seen in *Cornelison*, they distinguish the *Cornelison* approach from *Hanson* and its limitations. Therefore, so long as the continuous course of forum-state conduct, the rational nexus between the forum-state activity and the cause of action, and the factors of convenience and interests are present and strike an acceptable balance, the suggested variations of the *Cornelison* fact pattern seem also to be of constitutional validity.

In summary, the *Cornelison* doctrine will apparently withstand constitutional scrutiny. Moreover, the *Cornelison* approach is in keeping with the spirit of *International Shoe Co. v. Washington* that jurisdiction should not be determined according to some rigid formula but rather on a case-by-case analysis to decide whether exercising jurisdiction is fair and reasonable.

Conclusion

The *Cornelison* court, following the bold and liberal traditions of the California Supreme Court, rejected the limited notion of specific jurisdiction and extended California's long-arm reach. The result of its efforts is a new jurisdictional approach that this Comment has termed the *Cornelison* doctrine.

The *Cornelison* doctrine proposes that when neither the requirements of general jurisdiction nor the criteria of the traditional concept of specific jurisdiction is met, a broader form of specific jurisdiction may nonetheless be exercised. The plaintiff must first establish that the defendant has engaged in a continuous course of conduct within the forum state and that at least a rational nexus exists between this conduct and the cause of action. If the defendant is then unable to show that his inconvenience in defending in

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and this interest need not be limited to special regulatory or statutory interests (*see* Currie, *supra* note 26, at 549)—this interest may be considered in the jurisdictional determination process.

98. *See* Note, *supra* note 79, at 965. *But see* Kurland, *supra* note 79, at 620-21: "[*Hanson*] specifically rejects the notion of a parallel between forum non conveniens and the appropriate forum under Due Process Clause . . . ."

the forum state would be significantly greater than the countervailing interests of the plaintiff and the state in bringing him before a local tribunal, jurisdiction may be exercised.

Although the impact of the doctrine can be seen as merely nudging the reach of specific jurisdiction into a somewhat wider orbit, it is suggested that its scope is not so limited. Rather, the *Cornelison* doctrine should be viewed as a force that dislodges jurisdictional law from its stagnant post-*Hanson* crevice into a much more flexible approach based on the changing interrelationships among the three *Cornelison* factors. Under this view, the *Cornelison* doctrine can be proclaimed as truly a significant development in jurisdictional law.

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